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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

FNH USA, LLC M249S Rifle CAL:556,
Serial Number M249SA09203,

Defendant *in Rem*.

Case No.

**VERIFIED COMPLAINT FOR
FORFEITURE *IN REM***

Plaintiff United States of America brings this complaint and alleges as follows in accordance with Rule G(2) of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions:

BASIS FOR FORFEITURE

1. This is a civil action *in rem*, brought to enforce the provisions of 18 U.S.C. § 924(d) for the forfeiture of a firearm involved in a violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction because the United States commenced this action and because this is an action for forfeiture. 28 U.S.C. §§ 1345, 1355(a).

1 3. The Court has *in rem* jurisdiction because acts or omissions giving rise to
2 the forfeiture occurred in the District of Arizona, and because venue is proper in the
3 District of Arizona pursuant to 28 U.S.C. § 1395. 28 U.S.C. § 1355(b).

4 4. Venue is proper in this District because acts or omissions giving rise to
5 forfeiture occurred in this District, and because the property is located in this District. 28
6 U.S.C. §§ 1355(b), 1395(a), (b).

7 **DEFENDANT IN REM**

8 5. The Defendant *in Rem* consists of a FNH USA, LLC M249S Rifle
9 CAL:556, Serial Number M249SA09203 (the “FNH Rifle”).

10 6. The FNH Rifle was both seized and is currently in custody in Phoenix,
11 Arizona.

12 **BACKGROUND**

13 7. On July 17, 2023, Bureau of Alcohol, Tobacco, Firearms and Explosives
14 (“ATF”) Special Agents (“SA”) received information regarding a suspicious firearm
15 purchase made by James Florencio (“Florencio”) in relation to an ongoing investigation.

16 8. ATF SA Cunningham contacted Federal Firearms Licensee (“FFL”) Alpha
17 Dog Firearms located in Tempe, Arizona, and learned Florencio attempted to purchase a
18 FNH USA, LLC M249S Rifle CAL:556, Serial Number M249SA09203.

19 9. According to the transaction detail, Florencio paid a total of \$19,458.00 in
20 U.S. currency for the firearm on July 14, 2023.

21 10. SA Cunningham obtained wage information regarding Florencio.

22 11. According to the State of Arizona, Florencio’s last reported wages were in
23 the first quarter of 2023, and he made approximately \$5,659.68.

24 **ATTEMPTED INTERVIEW WITH JAMES FLORENCIO**

25 12. On July 17, 2023, SAs Cunningham and Cauble attempted to contact
26 Florencio at the residence he listed on Form 4473, 2055 E. Hampton Ave., Mesa, Arizona
27 85204.

1 13. SAs contacted the apartment manager of 2055 E. Hampton Ave., and
2 learned Florencio no longer lived at the apartment complex.

3 14. The apartment manager told SAs that Florencio had moved out of
4 Apartment 141 on December 27, 2021.

5 15. The apartment manager provided the move out statement for Florencio,
6 which confirmed the date he moved out.

7 16. SAs thanked the apartment manager for talking with them and left.

8 **SPECIAL AGENTS' VISIT TO ALPHA DOG FIREARMS AND**
9 **SEIZURE OF FNH FIREARM**

10 17. On July 17, 2023, SAs Cunningham and Cauble went to the FFL, Alpha
11 Dog Firearms, to view the FNH Rifle Florencio purchased.

12 18. ATF then seized the FNH Rifle Florencio was scheduled to receive.

13 19. The following FNH Rifle was taken into custody: FNH, M249S, 5.56
14 caliber rifle, SN: M249SA09203.

15 20. ATF presented the store manager of Alpha Dog Firearms with ATF forms,
16 Receipt for Property and Other Items (ATF Form 3400.23) and Consent to Forfeiture or
17 Destruction of Property and Waiver of Notice (ATF Form 3400.1), both of which the
18 store manager signed.

19 21. SA Cunningham thanked Alpha Dog Firearms employees for their
20 cooperation and left her contact information with them to give to Florencio when he came
21 in to receive his firearm.

22 **SPECIAL AGENTS' CONTACT WITH JAMES FLORENCIO**

23 22. On July 19, 2023, Florencio contacted SA Cunningham via phone and
24 agreed to speak with SAs at the ATF office in downtown Phoenix.

25 23. On July 20, 2023, ATF SAs met with Florencio in the lobby of ATF's
26 Phoenix Field Division building.

27 24. SAs showed Florencio their credentials and escorted Florencio to ATF's
28 office floor.

1 25. SAs Cunningham and Villarruel conducted an interview of Florencio.

2 26. SA Cunningham asked Florencio what gun he purchased on July 14, 2023,
3 from Alpha Dog Firearms.

4 27. Florencio stated he purchased an M249S, but he did not know the
5 manufacturer or make of the firearm.

6 28. SA Villarruel asked if Florencio had purchased firearms before, and
7 Florencio stated the M249S was the second firearm he had ever purchased.

8 29. Florencio told SAs he purchased a Glock 9mm pistol a couple months prior
9 for home protection.

10 30. SA Cunningham asked why Florencio purchased a M249S. Florencio stated
11 it was because he and a friend played a video game that had the M249S in it and liked
12 that firearm.

13 31. Florencio stated his friend did some research and found out where
14 Florencio could buy an M249S, and Florencio went to purchase it.

15 32. SA Cunningham clarified with Florencio he spent approximately \$20,000
16 on a firearm because he liked it in a video game.

17 33. Florencio confirmed “that’s why he bought it” and stated it “would also not
18 depreciate in value after purchase.”

19 34. SA Villarruel informed Florencio the M249S was an expensive firearm for
20 someone’s second firearm purchase ever and asked Florencio how he could afford the
21 firearm.

22 35. Florencio stated he was able to save money over time to purchase the
23 firearm.

24 36. SA Villarruel informed Florencio, according to the State of Arizona,
25 Florencio’s last reported wages were in the first quarter of 2023, and he made
26 approximately \$5,659.68 working at Mr. Bults, Inc., as a truck driver, which does not
27 match up with Florencio’s statement he was able to save up for a \$20,000 firearm.

1 37. Florencio stated he was recently let go from his trucking job so right now
2 he was driving for Uber and Lyft.

3 38. SA Villarruel asked if Florencio's bank records would reflect him saving
4 \$20,000 over time.

5 39. Florencio struggled to answer that question and stated he was paid cash for
6 different trucking jobs in the meantime and saved that cash because he has "limited
7 expenses."

8 40. SA Villarruel confirmed Florencio was implying he had \$20,000 in cash at
9 his house to purchase the firearm. Florencio stated that was correct.

10 41. SA Cunningham asked why Florencio put an incorrect address on the ATF
11 Form 4473.

12 42. Florencio stated he only had an Arizona identification ("ID") with his old
13 address on it, and while trying to find a utility bill showing his current address, the FFL
14 employee conducting the transaction hinted to Florencio to put the address listed on his
15 ID down.

16 43. SA Cunningham said if that happened or not, Florencio signed his name on
17 the Form 4473 stating all the information he listed was true and up to date.

18 44. SA Villarruel stated Florencio committed a federal offense by listing an
19 outdated address on Form 4473.

20 45. SA Villarruel stated Florencio was on the hook for this firearm purchase
21 unless he started telling agents the truth.

22 46. SA Villarruel informed Florencio that lying to SAs during the course of an
23 investigation is also a federal offense.

24 47. SA Villarruel asked if anyone gave Florencio money to purchase the
25 firearm. Florencio stated no one gave him money to purchase the firearm.

26 48. SA Cunningham stated she believes, based on the facts of the case,
27 Florencio straw purchased the firearm for someone.

1 49. SAs told Florencio he could petition to get the firearm back and the
2 paperwork would be sent to the apartment he gave as his correct, current residence.

3 50. Florencio stated he no longer wanted to answer questions and felt he
4 needed a lawyer.

5 51. SA Villarruel asked if Florencio would speak with SAs and asked again if
6 he had any questions.

7 52. Florencio stated he had no further questions for the SAs.

8 53. The interview was concluded, and Florencio was shown out of the office.

9 **FLORENCIO'S WAGE HISTORY**

10 54. SA Cunningham reviewed the reported wages for Florencio. According to
11 the Arizona Department of Economic Security ("DES"), Florencio's last reported wages
12 was in the first quarter of 2023.

13 55. Florencio earned only \$5,659.68 for the first quarter of 2023.

14 56. DES reflected no other reported wage history for Florencio.

15 57. According to the transaction detail, Florencio paid a total of \$19,458.00 in
16 U.S. currency for the FNH Firearm.

17 58. SAs Cunningham and Villarruel know through training and experience that
18 individuals who are often involved in firearms trafficking purchase firearms with cash so
19 as not to create credit card transactions records, and to conceal the recipient of the
20 firearm's identity.

21 59. SAs Cunningham and Villarruel also know through training and experience
22 that guns like the FNH Rifle are highly sought after firearms by members of the Mexican
23 Drug Trafficking Organizations ("MDTO") as they can be readily converted to belt-fed
24 machine guns for use against the Mexican military, Mexican law enforcement, and rival
25 MDTOs.

26 60. Prior to the transfer of a firearm from an FFL, the buyer must complete
27 ATF Form 4473 (Firearms Transaction Record). The FFL is required to keep a copy of
28 the ATF Form 4473 in its records.

61. ATF Form 4473 requires the purchaser to provide information regarding his/her identity, and answer, among others, the following questions: (a) whether he/she is the actual transferee/buyer of the firearms (the form notifies the transferee/buyer that he/she is not the actual transferee/buyer if he/she is acquiring the firearm on behalf of another person); and (b) whether he/she has ever been convicted in any court of a felony or any other crime for which the judge could have imprisoned him/her for more than one year, even if he/she received a shorter sentence including probation.

62. ATF Form 4473 also requires the buyer to certify, among other things, (a) that his/her answers are true, correct and complete; (b) that he/she understands that making false statements on the form is a crime; and (c) that he/she understands that if he/she answers in the affirmative to certain questions, including the question about having been convicted of a felony, that he/she is prohibited from receiving or possessing a firearm.

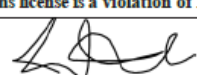
63. Florencio completed an ATF Form 4473 for his purchase of the FNH Rifle from Alpha Dog Firearms.

64. On the ATF Form 4473, Florencio identified his current state of residence and address as 2055 E Hamton Ave., Mesa, AZ 85204.

10. Current State of Residence and Address (U.S. postal abbreviations are acceptable. Cannot be a post office box.)					
Number and Street Address	City	Reside in City Limits?	State	ZIP Code	County/Parish/Borough
2055 e Hamton ave	mesa	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	AZ	85204	az

65. Florencio's current address is actually 102 W Palomino Dr Apt 205, Chandler, AZ 85225-7719.

66. Florencio answered "yes" to question 21a on the form and signed his name certifying his ATF Form 4473 in block 22, as shown below.

21. Answer the following questions by checking or marking either the "yes" or "no" box to the right of the questions:		Yes	No
a. Are you the actual transferee/buyer of all of the firearm(s) listed on this form and any continuation sheet(s) (ATF Form 5300.9A)?			
Warning: You are not the actual transferee/buyer if you are acquiring any of the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer any of the firearm(s) to you. Exception: If you are only picking up a repaired firearm(s) for another person, you are not required to answer 21.a. and may proceed to question 21.b.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
I certify that my answers in Section B are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 21.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 21.b. through 21.m. is prohibited from receiving or possessing a firearm. I understand that a person who answers "yes" to question 21.n.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 21.n.2. and provides the documentation required in 26.d. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale to predominantly earn a profit without a Federal firearms license is a violation of Federal law.			
22. Transferee's/Buyer's Signature		23. Certification Date	
		Month 07	Day 14
		Year 2023	

1 67. On August 17, 2023, ATF commenced administrative forfeiture.

2 68. On August 29, 2023, Florencio filed a claim to the subject property with
3 ATF.

4 **CLAIM FOR RELIEF**

5 69. The United States realleges, readopts, and reincorporates all the allegations
6 contained in paragraphs 1 through 68 as though fully set forth herein.

7 70. The defendant *in rem* is subject to forfeiture pursuant to 18 U.S.C. § 924(d)
8 as it is a firearm involved in a violation of providing materially false information to a
9 Federal Firearms Licensee in violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A).

10 WHEREFORE, the United States of America prays that process issue for an arrest
11 warrant *in rem* of the defendant property; that due notice be given to all parties to appear
12 and show cause why the forfeiture should not be decreed; that judgment be entered
13 declaring the defendant property be forfeited to the United States of America for
14 disposition according to law; and that the United States of America be granted such other
15 and further relief as this Court deems just and property, together with the costs and
16 disbursements of this action.

17 DATED this 17th day of November 2023.

18 GARY M. RESTAINO
19 United States Attorney
20 District of Arizona

21 /s/ Joseph F. Bozdech
22 JOSEPH F. BOZDECH
23 Assistant United States Attorney
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